

From the desk of Virginia Sloan

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Dear Friend,

In the Halls of Congress

Biosecurity and the Constitution Conference a Success

On April 11, the Constitution Project cosponsored - with the Stanford Constitutional Law Center - a day-long conference on Capitol Hill on "[Germ Warfare, Contagious Disease, and the Constitution](#)." The conference brought together key officials with federal and state executive and legislative experience, as well as constitutional law experts and scientists, to address the legal and constitutional implications of quarantines and public health surveillance measures that might be imposed in response to a bio-terrorism attack or natural outbreak of infectious disease. Secretary of Homeland Security Michael Chertoff gave the [keynote address](#), in which he discussed the need for a thorough examination of the legal issues that can be "resolved in a satisfactory way within the existing framework" -- and those that cannot. While there has been significant attention paid to the implications of these public health emergencies and the measures proposed to address them, this was one of the first conferences to bring together key policymakers and constitutional law experts to address the vital need to make sure those measures are constitutional.

At City Hall

DC to Centralize Network of 5,000 Cameras

Earlier this month, District of Columbia Mayor Adrian Fenty and Darrell Darnell, Director of the D.C. Homeland Security and Emergency Management Agency (HSEMA), announced plans for HSEMA to take control of and centralize monitoring of more than 5,000 video surveillance cameras, including those found in and around DC public schools, public housing, and residential neighborhoods. Sadly, Mr. Darnell's plans to take control of the system in the coming months do not appear to include applying the existing privacy safeguards developed by the District's Metropolitan Police Department (MPD). These guidelines, which currently govern the 91 cameras within the District operated by the MPD, have been praised by law enforcement officials, public security experts, and privacy advocates as among the best in the nation. Those safeguards follow the recommendations in our video surveillance report; former MPD Chief Charles Ramsey, in urging adoption of the policy, testified before the City Council in the fall of 2006 that the MPD policy "meets - or even exceeds - the guidelines presented by the Constitution Project." On April 15, the Constitution Project delivered a [letter](#) to Mayor Fenty and members of the Council urging them to maintain these safeguards as the system is centralized, or to implement even stronger safeguards. The Constitution Project will continue to monitor this situation and will report happenings in this space.

In the Courts

Court Rules on Lethal Injection in *Baze*

On April 16, 2008, the Supreme Court ruled in *Baze v. Rees* that the most commonly-used protocol for lethal injection does not violate the Constitution's prohibition against cruel and unusual punishment - at least as it is used in Kentucky. The Court's 7-2 [decision](#) was fractured by concurrences and dissents on several major points. It was also notable for Justice Stevens' declaration that he now regards the death penalty itself as cruel and unusual and thus a violation of the Eighth Amendment. The ruling ends what has been a *de facto* national moratorium on executions; several states have already reset execution dates and, on April 22, the Court [denied](#) eleven separate appeals from inmates on death rows around the country. The ruling may not, however, end the litigation over lethal injections since the standard set forth in the Court's plurality opinion seems to allow for challenges in other states if there is more substantial evidence of problems with the so-called three drug protocol. While the Constitution Project has taken no specific stance on lethal injection, this case highlights the many flaws in the capital punishment system, including lack of effective counsel, unreliable eyewitness identification, and discrimination in sentencing, among others. These issues and more were highlighted by our Death Penalty Committee in [Mandatory Justice: The Death Penalty Revisited](#).

Justices Consider Death for Non-Murder Crimes

Immediately after handing down its opinion in *Baze*, the Supreme Court heard [oral arguments](#) in *Kennedy v. Louisiana*. Those arguments considered the case of Patrick Kennedy, who was convicted of raping his 8 year-old stepdaughter and sentenced to death under a Louisiana law that permits capital punishment for crimes not involving a homicide. In [Mandatory Justice](#) the Death Penalty Committee recommended that eligibility for capital punishment be narrowly limited and apply only to crimes involving a homicide. Expanding capital punishment to other crimes, no matter how heinous, dramatically increases the risk of error, discrimination, and arbitrary application.

Above the Fold

National Journal: Reforming the State Secrets Privilege

In his April 12, 2008, [feature](#) in the *National Journal*, legal columnist Stuart Taylor discussed the need for substantive reform of the "state secrets privilege." The privilege is often used by the executive branch to quash lawsuits challenging controversial federal policies. Taylor specifically noted the leadership of the Constitution Project on this issue, citing the [statement](#) of our Liberty and Security Committee and Coalition to Defend Checks and Balances urging reform of the privilege.

NPR: Video Surveillance and Death Penalty

Senior Counsel Sharon Bradford Franklin was a featured commentator on the April 13, 2008, [edition](#) of *Weekend Edition Sunday*. Sharon discussed the fact that video surveillance is an area in which technology has developed much more rapidly than the law, creating a need for policies to protect individual privacy rights. I joined NPR's Tell Me More as a special guest on April 18 to [discuss](#) the Supreme Court's ruling in *Baze v. Rees* and the oral arguments in *Kennedy v. Louisiana*.

The Champion: Watching the Watchers

The April 2008 edition of *The Champion* featured an [article](#) by Sharon on the need for publicly-developed guidelines for the use of video surveillance systems. Sharon specifically discussed the Constitution Project's *Guidelines* and the experiences of major cities in the U.S. and abroad, noting that the "proliferation of public video surveillance systems means an ever-increasing risk of encroachment upon civil liberties."

With a Little Help from Our Friends

ACLU Files International Appeal in *El-Masri*

On April 9, the American Civil Liberties Union [petitioned](#) the Inter-American Commission on Human Rights on behalf of Khaled El-Masri, saying the U.S. government should be called on to apologize for its treatment of Mr. El-Masri and that the CIA's anti-terrorism rendition program should be found unlawful. Mr. El-Masri is a German citizen who was held by American agents for months, drugged, beaten, and tortured, apparently in violation of U.S. laws and treaties, and then abruptly deserted in a foreign country after federal officials realized they were holding the wrong man. His suit against the federal government was dismissed by the Fourth Circuit Court of Appeals last year after the Justice Department claimed a hearing would reveal state secrets. Attorneys from the American Civil Liberties Union representing Mr. El-Masri had filed a petition seeking review of the case in the Supreme Court, and the Constitution Project had filed an [amicus brief](#) in support, urging the Court to accept review of the case. Unfortunately, that petition was denied in October.

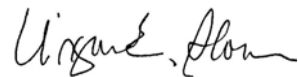
Congress Considers National Security Letters

On Tuesday the Constitution Project joined a broad, bipartisan coalition in calling on Members of Congress to support the National Security Letters Reform Act. NSLs, which do not require prior judicial approval, can be used to obtain a wide range of documents based upon vague claims that the information is merely "relevant" to a terrorism investigation. Once the FBI acquires records with an NSL, it can keep them indefinitely, even when it concludes that the subject of those records is innocent of any crime and is not of intelligence interest. The bipartisan Act would impose reasonable limits on the use of the letters and how data obtained through their use could be used and retained. On Wednesday, the Senate Judiciary Committee heard testimony on the subject, focusing on "[The Need for Greater Accountability and Oversight](#)."

Verbatim

"The District has become a national leader in its efforts to preserve constitutional rights and civil liberties while making full use of advanced technologies to preserve public safety. That leadership role-and the freedom of District citizens-must be preserved as the Homeland Security and Emergency Management Agency assumes control of the District's surveillance systems." - from the Constitution Project's letter to Mayor Fenty and the DC Council

Sincerely,



Virginia E. Sloan